

States, or (ii) employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

#### **52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.**

As prescribed in 37.113-2(b), use the following clause:

#### **Waiver of Limitation on Severance Payments to Foreign Nationals (Oct 1995)**

(a) Pursuant to 10 U.S.C. 2324(e)(3)(A) or 41 U.S.C. 256(e)(2)(A), as applicable, the cost allowability limitations in FAR 31.205-6(g)(3) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

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#### **48 CFR Part 31**

[FAC 90-31, FAR Case 94-750; Item V]

RIN 9000-AG33

#### **Federal Acquisition Regulation; Entertainment, Gift, and Recreation Costs for Contractor Employees**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Acquisition Regulation to revise the cost principles governing entertainment, gift and recreation costs for contractor employees. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarence M. Belton, Team Leader, Cost Principles Team, at (703) 602-2357, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-31, FAR case 94-750.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network. This notice announces Federal Acquisition Regulation (FAR) revisions developed under FAR case 94-750 to implement Section 2192 of the Act.

The final rule revisions to the cost principles at FAR 31.205-13 and 31.205-14 are made as a result of Section 2192 of the Federal Acquisition Streamlining Act of 1994. An interim rule was promulgated to meet the 120-day and 90-day deadlines in Section 2192 for changes to FAR 31.205-13 and 31.205-14, respectively. The interim rule was published in the **Federal Register** on January 13, 1995, 60 FR 3314. This final rule replaces the interim rule in its entirety for any contracts containing the interim rule. Thus, the provisions of the interim rule will not apply to costs incurred under any contract under any circumstances.

To comply with the requirements of paragraph (a)(1) of Section 2192, the final rule provides that the costs of gifts are expressly unallowable (31.205-13(b)). To clarify that the rule does not disallow costs which meet the definition of and are properly accounted for as compensation or recognition awards, the final rule provides a reference to 31.205-6, which allows compensation awards recognizing performance but also allows for recognition awards pursuant to an established contractor plan or policy. Additionally, it makes the costs of recreation expressly unallowable with the exception of costs of company sponsored employee sports teams and employee organizations designed to improve company loyalty, team work, or physical fitness. The final rule retains the allowability of "wellness/fitness centers" found in the interim rule. The final rule eliminates the requirement that costs are only allowable to the extent that the net amount per employee must be reasonable for all categories of costs under this cost principle.

To comply with the requirements of paragraph (a)(2) of Section 2192, the final rule revises the cost principle at 31.205-14 to incorporate the statutory

wording relating to the unallowability of entertainment costs and to delete the "but see" provision.

##### **B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, are not subject to the FAR cost principles.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

##### **D. Public Comments**

Twenty-three public comments were received in response to the interim rule published in the **Federal Register** on January 13, 1995 (60 FR 3314). These comments were considered in the formulation of this final rule.

##### **List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: August 7, 1995

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Part 31 is amended as set forth below:

#### **PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-13 is revised to read as follows:

##### **31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.**

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b), (c), and (d) of this subsection. Some examples of allowable

activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or

similar sources, may be included as costs incurred under paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

3. Section 31.205-14 is revised to read as follows:

#### **31.205-14 Entertainment costs.**

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

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#### **48 CFR Parts 42 and 52**

[FAC 90-31; FAR Case 94-752; Item VI]

RIN 9000-AG29

#### **Federal Acquisition Regulation; Contractor Overhead Certification**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement the requirements for contractor certification of indirect costs (see proposed rule published at 59 FR 65464, December 19, 1994). Section 2151 of the Act amended Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256). This provision extended to the civilian agencies the same certificate of indirect costs which is currently applicable to Department of Defense (DOD) contracts, pursuant to 10 U.S.C. 2324(h). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarence Belton, Cost Principles Team Leader, at (703) 602-2357, in reference to this FAR case. For general information, contact the FAR

Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-31, FAR case 94-752.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Section 2151 of the Act amends Section 306 of the Federal Property and Administrative Services of 1949 (41 U.S.C. 256). It extends requirements for contractor certification of indirect costs to the civilian agencies. Pursuant to 10 U.S.C. 2324(h), the Department of Defense already determines or negotiates contractor indirect cost rates on the basis of a certified proposal.

##### **B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, do not require submission of indirect cost rate proposals.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose additional recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### **D. Public Comments**

Seven public comments were received in response to the proposed rule published in the **Federal Register** on December 19, 1994 (59 FR 65464). These comments were considered in the formulation of this final rule.